



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2012-0958; FRL- 9786-3

Approval and Promulgation of Air Quality Implementation Plans; Utah; Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the Governor of Utah on March 22, 2007. The SIP revision is the State of Utah's maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, along with associated rules: R307-101-2, "Definitions;" R307-110-13, "Section IX, Control Measures for Area and Point Sources, Part D, Ozone;" R307-320, "Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program;" R307-325, "Ozone Nonattainment and Maintenance Areas: General Requirements;" R307-326, "Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries;" R307-327, "Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage;" R307-328, "Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage;" R307-335, "Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations;" R307-340, "Ozone Nonattainment and Maintenance Areas: Surface Coating Processes;" R307-341, "Ozone Nonattainment and Maintenance Areas: Cutback Asphalt;" and R307-342, "Ozone Nonattainment and Maintenance Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks." This action is being taken under sections 107 and 110 of the Clean Air Act (Act or CAA).

DATES: This action is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R08-OAR-2012-0958. All documents in the docket are listed at <http://www.regulations.gov>. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 8, Air Quality Planning Unit (8P-AR), 1595 Wynkoop Street, Denver, Colorado, 80202. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129, (303) 312-7814, ostendorf.jody@epa.gov

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Definitions

For the purpose of this document, we are giving meaning to certain words as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The initials SIP mean or refer to State Implementation Plan.

(iv) The words State or Utah mean the State of Utah, unless the context indicates otherwise.

I. Background of State Submittals

A. Regulatory Context

Under the CAA enacted in 1970, EPA established national ambient air quality standards (NAAQS) for certain pervasive air pollutants, such as photochemical oxidant, carbon monoxide, and particulate matter. The NAAQS represent concentration levels below which public health and welfare are protected. The 1970 Act also required states to adopt and submit SIPs to implement, maintain, and enforce the NAAQS.

From time-to-time, the CAA requires SIP revisions to account for new or amended NAAQS or to meet other changed circumstances. The CAA was significantly amended in 1977, and under the 1977 Amendments, EPA promulgated attainment status designations for all areas of the country with respect to the NAAQS.

The CAA requires EPA to periodically review and revise the NAAQS, and in 1979, EPA established a new NAAQS of 0.12 parts per million (ppm) for ozone, averaged over 1 hour. This new NAAQS replaced the oxidant standard of 0.08 ppm. See 44 FR 8202 (February 8, 1979). Areas designated nonattainment for oxidant were considered to be nonattainment for ozone as well. Part D of CAA Title I requires special measures for areas designated nonattainment. On August 15, 1984, EPA approved Utah's SIP for the 1-hour ozone standard for the Salt Lake County and Davis County nonattainment area (49 FR 32575).

Congress significantly amended the CAA again in 1990. Under the 1990 Amendments, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including Salt Lake County and Davis County, was classified by operation of law as marginal, moderate, serious, severe, or extreme nonattainment depending on the severity of the area's air quality problem. The ozone nonattainment designation for Salt Lake County and Davis County continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990. Furthermore, the area was classified by operation of law as moderate for ozone under CAA section 181(a)(1).

Under CAA section 175A, states may request redesignation of a nonattainment area to attainment if monitoring data showed that the area has met the NAAQS and if the area meets

certain other requirements. On July 18, 1995, both Salt Lake and Davis Counties were found to be attaining the 1-hour ozone standard (60 FR 36723). On July 17, 1997, EPA approved the State's request to redesignate Salt Lake and Davis Counties to attainment for the 1-hour ozone standard. As part of that action, EPA approved the State's 1-hour ozone maintenance plan (62 FR 38213).

On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS of 0.08 ppm (62 FR 38894). This standard was intended to replace the 1-hour ozone standard. On April 30, 2004, EPA designated areas of the country for the 1997 8-hour ozone standard (69 FR 23857). EPA designated all areas in Utah, including Salt Lake County and Davis County, as unclassifiable/attainment for the 1997 8-hour ozone NAAQS (69 FR 23940).

Also, on April 30, 2004, EPA revoked the pre-existing 1-hour NAAQS (69 FR 23951, 23996; 40 CFR 50.9(b)). As part of this rulemaking, EPA established certain requirements to prevent backsliding in those areas that were designated as nonattainment for the 1-hour ozone standard at the time of designation for the 8-hour ozone standard, or that were redesignated to "attainment" but subject to a maintenance plan, as is the case for Salt Lake County and Davis County. These requirements are codified at 40 CFR 51.905.

In the case of Utah, one of these requirements was to submit a maintenance plan for the 1997 8-hour ozone standard. On March 22, 2007, the Governor of Utah submitted a maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, and associated rule revisions. In this notice, EPA is acting on the March 22, 2007 maintenance plan and rule revisions.

In 2008, EPA promulgated a lower 8-hour ozone standard – 0.075 ppm (73 FR 16436;

March 27, 2008). The 2008 ozone standard retains the same general form and averaging time as the 0.08 ppm standard set in 1997. Effective July 20, 2012, Salt Lake County and Davis County were designated Unclassifiable/Attainment for this lower standard (77 FR 30088, 30151).

B. Ambient Ozone Conditions

The 1997 ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient ozone concentration (also referred to as the "design value") is less than or equal to 0.08 ppm at all monitoring sites within an air quality planning area. 40 CFR part 50, Appendix I, section 2.3, directs that the third decimal place of the computed three-year average be rounded; values equal to or greater than 0.005 are rounded up. Thus, under our regulations, a computed three-year ozone concentration of 0.085 ppm is the smallest value that is considered to be greater than 0.08 ppm and, thus, a violation of the standard.

A review of the data gathered at the ozone monitoring sites in Salt Lake County and Davis County from 2000-2011¹ shows the area has been attaining the 8-hour ozone NAAQS except for the 2005-2007 period, which had a design value of 0.085 ppm. As noted above, EPA designated Salt Lake County and Davis County unclassifiable/attainment for the lower 2008 ozone standard (0.075 ppm) based on monitored values for 2008-2010. The following table shows design values for each year from 2000 through 2011:

Table 1. Salt Lake and Davis Counties Three-Year Average of the 4th Highest Ozone Value (ppm)

Monitoring Site (County)	2000-2002	2001-2003	2002-2004	2003-2005	2004-2006	2005-2007	2006-2008	2007-2009	2008-2010	2009-2011
Beach (Salt Lake)	0.081	0.081	0.078	0.079	0.081	0.083	0.079	0.076	0.072	0.072
Bountiful	0.082	0.083	0.078	0.079	0.080	0.085	0.080	0.077	0.074	0.071

¹ Data for 2012 have not been certified yet.

(Davis)										
Cottonwood (Salt Lake)	0.076	0.080	0.079	0.080	0.080	0.083	0.082	0.077	0.075	0.073
Hawthorne (Salt Lake)	0.077	0.080	0.078	0.077	0.077	0.081	0.078	0.076	0.074	0.074
Herriman (Salt Lake)	0.078	0.076	0.076	0.076	0.078	0.080	n/a	n/a	n/a	n/a
West Valley (Salt Lake)	0.079	0.080	0.076	0.078	0.078	0.081	n/a ²	n/a	n/a	n/a

C. Our Proposal

Our notice of proposed rulemaking was published in the *Federal Register* on January 2, 2013 (78 FR 37). In that notice, we proposed the following actions with respect to the State's March 22, 2007 submittal:

1. We proposed to approve the State's maintenance demonstration for the 1997 8-hour ozone NAAQS for Salt Lake and Davis Counties, but, in the alternative, to disapprove the maintenance demonstration if comments were to convince us that approval would not be consistent with the Clean Air Act.

2. We proposed to approve the rest of the State's 1997 8-hour ozone maintenance plan for Salt Lake and Davis Counties, except for the following aspects, which we proposed to disapprove:

- a. Those contingency measures listed in the State's maintenance plan that are voluntary in nature, and the contingency measure described in the maintenance plan as "Establish an Offset Ratio for NOx."

- b. The State's proposal to remove from the SIP the VOC RACT approval orders for Hill

Air Force Base.

c. The State's proposal to remove from the SIP the NO_x RACT limits for the PacifiCorp Gadsby Power Plant.

d. Section 5.g of the maintenance plan, which indicates that the employer based trip reduction program is included as part of the plan.

3. We proposed to take no action on R307-101-2 because we already acted on a later version of the definitions.

4. We proposed to approve R307-110-13, but only to the extent we were proposing to approve the 1997 8-hour ozone maintenance plan.

5. We proposed to disapprove R307-320, the employer-based trip reduction program.

6. We proposed to approve R307-325, R307-326, R307-327, R307-328, R307-335, R307-340, R307-341, and R307-342, subject to our interpretation of these rules.

For further detail regarding the bases for our proposed actions, please see our notice of proposed rulemaking at 78 FR 37.

D. Public Participation

We requested comments on our proposed action and provided a 30-day comment period, which closed on February 1, 2013. In this action, we are responding to the comments we received and taking final rulemaking action.

E. Alternative Methods of Control (AMOC) and EPA's Concurrence Requirement

In our proposal, we noted our interpretation of certain Utah rules; we are repeating that interpretation here. The State's March 22, 2007 submittal included revisions to rules R307-326, R307-327, R307-328, R307-335, R307-340, and R307-342. For each of these rules, the State

included AMOC language that was previously included in R307-325. That language states:

“Any person may apply to the executive secretary for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by [this rule], or that the alternate test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule.”

The Utah Department of Environmental Quality (DEQ) confirmed that this regulatory language requiring concurrence from EPA on any AMOC applies to all the provisions in the rules that allow for DEQ to alter the compliance requirements of the rules. As more fully explained below, our interpretation is that our concurrence on an alternative compliance requirement must occur through approval of a SIP revision.

Section 110(i) of the CAA specifically precludes states from changing the requirements of the SIP that apply to any stationary source except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the Act and the implementing regulations at 40 CFR Part 51. See, e.g., CAA section 110(l); 40 CFR 51.104. Section 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the state must submit it in accordance with the requirements of 40 CFR 51.104, which includes the public notice, comment and hearing provisions of 40 CFR 51.102.

Furthermore, the AMOC provision in the State's rules does not contain specific, objective, and replicable criteria for determining if such "alternate methods" are in fact at least as effective as the required methods in terms of emission rates and ambient impacts. For purposes of meeting CAA requirements, EPA concurrence in the form of a SIP approval is required for any of the alternate compliance provisions throughout R307-326, R307-327, R307-328, R307-335, R307-340, and R307-342. This includes approval of an alternate method of control, an alternate test method, an alternate compliance period, an alternate emission limit, a variance, or an alternate monitoring schedule. The public notice process of a SIP approval will allow EPA and the public to determine whether any new compliance terms approved by the executive secretary continue to assure maintenance of the ambient standard.²

II. Final Action

A. Maintenance Plan.

For the reasons described in our notice of proposed rulemaking (78 FR 37) and in our response to public comments in section III, below, we are taking the following actions with respect to the maintenance plan for the 1997 8-hour ozone NAAQS for Salt Lake and Davis Counties that the State submitted on March 22, 2007:

1. We are approving the State's maintenance demonstration for the 1997 8-hour ozone NAAQS for Salt Lake and Davis Counties.
2. We are approving the rest of the State's 1997 8-hour ozone maintenance plan for Salt Lake and Davis Counties, except for the following aspects, which we are disapproving:

² By adopting a generic SIP provision consistent with the EPA guidance known as White Paper Number 2, a state may be able to streamline EPA's SIP approval process for an AMOC. White Paper Number 2, Attachment B, envisions the use of the Title V permit process to establish alternative requirements.

a. Those contingency measures listed in section 6.d of the State’s maintenance plan that are voluntary in nature, as follows:

1. “Alert Day Enhancements;”
2. “Heavy Equipment Emission Control Program;”
3. “Reduce Emission of VOCs,” to the extent the State would adopt and implement the measure as a voluntary commitment rather than a regulatory measure;
4. “Identification of High-Polluting Vehicles;” and
5. “Other VOC and NOx emission control measures as appropriate,” to the extent such measures would be voluntary.

b. The contingency measure listed in section 6.d of the State’s maintenance plan as “Establish an Offset Ratio for NOx.”

c. The State’s proposal in section 5.a.(3)(b) of the maintenance plan to remove from the SIP the VOC RACT approval orders for Hill Air Force Base.

d. The State’s proposal in section 5.b.(1) of the maintenance plan to remove from the SIP the NOx RACT limits for the PacifiCorp Gadsby Power Plant.

e. Section 5.g of the maintenance plan, which indicates that the employer-based trip reduction program is included as part of the plan.

For the reasons stated in our notice of proposed rulemaking (78 FR 41-42), our disapproval of various aspects of the maintenance plan does not trigger an obligation under CAA section 110(c) to promulgate a federal implementation plan.

B. Rules.

For the reasons described in our notice of proposed rulemaking (78 FR 37),³ we are taking the following actions with respect to the rule revisions that the State submitted on March 22, 2007.

1. We are taking no action on R307-101-2 because we have already acted on a later version of the definitions.

2. We are approving R307-110-13, but only to the extent we are approving the 1997 8-hour ozone maintenance plan.

3. We are disapproving R307-320, the employer-based trip reduction program. For the reasons stated in our notice of proposed rulemaking (78 FR 42), our disapproval of R307-320 does not trigger an obligation under CAA section 110(c) to promulgate a federal implementation plan.

4. We are approving R307-325.

5. We are approving R307-326, subject to the following: We interpret the following provisions in R307-326 (in addition to any other request for an alternate method of control under R307-326 that may arise outside of these provisions) as being subject to the requirement in R307-326-10(1) for EPA concurrence:

a. R307-326-4(3).

b. R307-326-6(3).

c. In R307-326-7, the provision that reads, “or controlled by other methods, provided the design and effectiveness of such methods are documented, submitted to, and approved by the executive secretary.”

³ We received no adverse comments on our proposal to approve the State’s rule revisions.

d. R307-326-9(5)(a).

e. In R307-326-10(3), the provision that reads, “or approved by the executive secretary.”

As stated in our notice of proposed rulemaking (78 FR 42) and reiterated in section I.E. above, EPA concurrence under R307-326-10(1) must occur through EPA approval of a SIP revision.

In addition to the foregoing, we interpret R307-326-10(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-326.

6. We are approving R307-327, subject to the following: We interpret the following provisions in R307-327 (in addition to any other request for an alternate method of control under R307-327 that may arise outside of these provisions) as being subject to the requirement in R307-327-7(1) for EPA concurrence:

a. In R307-327-4(1), the provision that reads, “or alternative equivalent controls, provided the design and effectiveness of such equipment is documented and submitted to and approved by the executive secretary.”

b. R307-327-6(3)(d).

c. In R307-327-7(3), the provision that reads, “or approved by the executive secretary.”

As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307-327-7(1) must occur through EPA approval of a SIP revision.

In addition to the foregoing, we interpret R307-327-7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-

327.

7. We are approving R307-328, subject to the following: We interpret the following provisions in R307-328 (in addition to any other request for an alternate method of control under R307-328 that may arise outside of these provisions) as being subject to the requirement in R307-328-8(1) for EPA concurrence:

a. In R307-328-4(6), the provision that reads, “or alternate equivalent methods * * *. The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the executive secretary.”

b. In R307-328-4(9), the provision that reads, “The frequency of tests may be altered by the executive secretary upon submittal of documentation which would justify a change.”

c. In R307-328-5(1)(c), the provision that reads, “or their equivalent which have been approved by the executive secretary.”

d. In R307-328-6(4), the provision that reads, “or equivalent equipment provided the design and effectiveness of such equipment are documented and submitted to and approved by the executive secretary.”

e. In R307-328-8(3), the provision that reads, “or approved by the executive secretary.” As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307-328-8(1) must occur through EPA approval of a SIP revision.

In addition, we interpret R307-328-8(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-328.

8. We are approving R307-335, subject to the following: We interpret the following

provisions in R307-335 (in addition to any other request for an alternate method of control under R307-335 that may arise outside of these provisions) as being subject to the requirement in R307-335-7(1) for EPA concurrence:

a. In R307-335-4(3), the provision that reads, “or by an alternate means approved by the executive secretary.”

b. In R307-335-7(3), the provision that reads, “or approved by the executive secretary.”

As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307-335-7(1) must occur through EPA approval of a SIP revision.

In addition, we interpret R307-335-7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-335.

9. We are approving R307-340, subject to the following: We interpret the following provisions in R307-340 (in addition to any other request for an alternate method of control under R307-340 that may arise outside of these provisions) as being subject to the requirement in R307-340-16(1) for EPA concurrence:

a. In R307-340-4(4), the provision that reads, “or by an alternate means approved by the executive secretary.”

b. In R307-340-4(5)(a), the provision that reads, “Sources may request approval for longer times for compliance determination from the executive secretary.”

c. In R307-340-15(1), the provision that reads, “or an alternative method approved by the executive secretary.”

d. In R307-340-15(2), the provision that reads, “or an alternative method approved by the

executive secretary or equivalent method.”

e. In R307-340-16(3), the provision that reads, “or approved by the executive secretary.”

As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307-340-16(1) must occur through EPA approval of a SIP revision.

In addition, we interpret R307-340-16(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-340.

10. We are approving R307-341.

11. We are approving R307-342, subject to the following: We interpret the following provision in R307-342 (in addition to any other request for an alternate method of control under R307-342 that may arise outside of this provision) as being subject to the requirement in R307-342-7(1) for EPA concurrence:

a. In R307-342-7(3), the provision that reads, “or approved by the executive secretary.”

As stated in our notice of proposed rulemaking and reiterated in section I.E. above, EPA concurrence under R307-342-7(1) must occur through EPA approval of a SIP revision.

In addition, we interpret R307-342-7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-342.

III. Issues Raised by Commenters and EPA’s Responses

We received comments from a single commenter. We summarize the comments and provide our responses below.

Comment: Utah should not be allowed to rely on 2002 emission inventories to show

maintenance of the ozone standard when there was a violation of that standard for the 2005 to 2007 season. Such an approach does not provide the citizens of Utah with a sound demonstration that the ozone standard will be met and that their health will correspondingly be protected. EPA itself noted in its notice of proposed rulemaking that the violation casts doubt on the use of the 2002 emissions inventories as representative of the levels of emissions that are consistent with maintaining the standard. But then EPA lists several factors which it suggests support the use of the 2002 inventories as representative of levels consistent with compliance with the standard. For example, EPA noted that the violation was at 0.085 ppm, only slightly above the standard. However, any violation of the standard is unacceptable and reliance on an inventory that results in a violation is inconsistent with the purpose of the NAAQS to protect human health and the environment. EPA also suggests that 2005 was an anomaly and thus should be discounted. However, hot weather like that experienced during 2005 is likely to be the norm in coming years. Thus, it is likely that the ozone levels experienced in 2005 will recur. Monitoring data for 2012, which had the hottest summer on record, indicates a troubling trend toward higher ozone levels in Utah's urban areas.

Response: In the unique circumstances involved here, we conclude that approval of the maintenance demonstration is appropriate. As stated in our proposal, our conclusion is based on a combination of factors, and is not focused only on the 2002 inventories as the benchmark for ongoing maintenance. These factors are the following:

1. Since the time of the area's designation to attainment in 2004, the only monitored violation occurred during 2005–2007. As stated above, the 1997 8-hour ozone standard is attained at a design value of 0.084, and the design value for 2005–2007 was 0.085 ppm—the

lowest value that can represent a violation.

2. In 2005, the area monitored significantly higher 4th high maximum values than it had monitored in the previous four years and than it has monitored since 2005 to the present.

3. In 2006–2008, the area immediately returned to attainment and has continued to attain the standard. Complete quality-assured data for 2007–2009, 2008–2010, 2009–2011, and preliminary data for 2012, show that the area has continuously maintained the standard.

4. Under the applicable regulatory requirement, 40 CFR 51.905(a)(4), the State must demonstrate maintenance for ten years after designation, or until 2014.

5. In evaluating the potential for the area to continue to maintain through 2014, given its continued maintenance during and subsequent to 2008, EPA takes into consideration the fact that, in order for the area to violate the standard in 2013–2014, the area would have to experience significantly higher 4th high maximums than it experienced in 2005. We find this prospect to be highly unlikely, particularly given the State’s projected lowering emissions trends, as reflected in the maintenance plan.

6. Mobile source emissions account for a very large portion of the overall emissions inventory, and federal motor vehicle control standards, combined with fleet turnover, will continue to further reduce relevant mobile source emissions through 2014.

In addition, as we noted in our proposal, EPA designated Salt Lake County and Davis County unclassifiable/attainment for the lower 2008 ozone standard (0.075 ppm) based on monitored values for 2008–2010.

Contrary to the commenter’s suggestion, our reference to the 2005–2007 design value of 0.085 was not intended to suggest that a lower violation is not a violation or that it should be

ignored. However, we do think the magnitude of the value is relevant, along with the other factors noted above, to our assessment of the maintenance demonstration. In particular, the maintenance plan projects substantial reductions of VOC and NO_x emissions after 2005. The following tables show these projections.

Table 2. Salt Lake and Davis Counties Source Category Totals for VOCs (tons/day)

	2002	2005	2008	2011	2014
Point Source	11.24	11.21	11.66	11.96	12.36
Area Source	89.32	92.42	96.30	101.86	107.75
Biogenic Source	120.26	120.26	120.26	120.26	120.26
Mobile On- Road	57.66	44.70	35.36	29.11	24.52
Mobile Non- Road	29.55	25.47	20.90	18.42	16.57
Total	308.03	294.06	284.48	281.61	281.46

Table 3. Salt Lake and Davis Counties Source Category Totals for NO_x (tons/day)

	2002	2005	2008	2011	2014
Point Source	39.27	38.09	37.78	36.75	36.82
Area Source	11.36	10.08	10.79	11.82	12.82
Mobile On- Road	98.89	85.52	65.47	49.45	35.92
Mobile Non- Road	83.87	80.35	72.56	63.48	51.30

Road					
Total	233.39	214.04	186.60	161.50	136.86

We disagree with the commenter’s assertion that data from the summer of 2012 indicate “a troubling trend toward higher levels of ozone in Utah’s urban areas” and undermine our statements about the 2005 data. While we note that the 2012 data are not yet certified, the preliminary data reflect values that are significantly below those experienced in 2005, even with the high temperatures experienced at that time. If anything, these data appear to support our overall conclusion that ongoing reductions in emissions, largely due to federal motor vehicle control standards, will result in ongoing maintenance of the 1997 ozone NAAQS.

Comment: EPA points out that “[u]nder the applicable regulatory requirement, 40 CFR 51.905(a)(4), the State must demonstrate maintenance for ten years after designation, or until 2014.” However, this statement seems to disregard the fact that Salt Lake and Davis counties violated the 8-hour ozone standard during the 2005 to 2007 season. Therefore, this observation does not seem to bolster the case for using the 2002 inventories as representative of what is necessary to maintain the standard. Moreover, it suggests that Utah cannot show maintenance for ten years after 2004.

Response: As stated in our prior response, in the unique circumstances in this case, our conclusion is based on a combination of factors, and is not focused solely on the 2002 inventories as the benchmark for ongoing maintenance. We do not cite the proximity of 2014, the end of the maintenance period, to bolster the validity of the 2002 inventories as a maintenance benchmark.

Instead, we find it relevant to our assessment of the likelihood that the area will continue to attain the standard through the end of the maintenance period, considering the other factors involved.

As to the assertion that Utah cannot show maintenance for ten years after 2004, this is not an instance in which the area has experienced repeated violations; it experienced a single violation in the 2005-2007 period, largely based on unusually high values experienced in 2005. It did not experience a violation in the relevant periods before then and has not experienced a violation since. It is highly unlikely the area will experience a violation before 2014, the end of the maintenance period, given the air quality values in recent years. Furthermore, even if we concluded that the maintenance demonstration should extend until 2015, the relevant factors similarly indicate the area will continue to maintain the standard until then.

Comment: The State of Utah has failed to meet its SIP obligations relative to its Title V permit program. Several major sources in Salt Lake and Davis counties do not have and have never had Title V permits. This casts substantial doubt on any claim Utah may make that it is able to ensure compliance with air quality permit terms and conditions, to accurately monitor emissions from stationary sources and to guarantee that emissions from these sources will actually conform to the various projections on which the state relies to show maintenance. EPA should disapprove the maintenance plan because the State of Utah is failing to implement an adequate Title V program.

Response: The commenters' assertions do not require disapproval of the maintenance plan. We note that the Title V permit program is not a SIP program or requirement; it is separate from the SIP. Thus, there are no SIP obligations relative to the Title V permit program. Moreover, applicable CAA requirements are State and federally enforceable whether or not they are contained in a Title V permit. This includes SIP requirements and major and minor source

construction permit requirements. Here, the specific measures for major stationary sources that are relevant to ongoing maintenance are contained in the EPA-approved ozone SIP and remain federally enforceable. For the foregoing reasons, we do not find the absence of Title V permits to be a basis to undermine or disapprove the maintenance plan.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves some state law as not meeting Federal requirements; it does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: February 13, 2013

James B. Martin
Regional Administrator
Region 8

Note: This document was received by the Office of the Federal Register on September 19, 2013.

40 CFR part 52 is amended to read as follows:

PART 52 -APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart TT - Utah

2. Section 52.2320 is amended by adding paragraph (c)(73) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(73) On March 22, 2007, the Governor submitted revisions to Section IX, Part D of the Utah State Implementation Plan (SIP) in the form of a maintenance plan for the 1997 8-hour ozone national ambient air quality standard (NAAQS) for Salt Lake County and Davis County. On March 22, 2007, the Governor also submitted revisions to associated rules: UAC R307-101-2, R307-110-13, R307-320, R307-325, R307-326, R307-327, R307-328, R307-335, R307-340, R307-341, and R307-342. EPA is approving the maintenance plan, except for the following aspects, which EPA is disapproving: those contingency measures listed in section 6.d of the State's maintenance plan that are voluntary in nature, which consist of: "Alert Day Enhancements," "Heavy Equipment Emission Control Program," "Reduce Emissions of VOCs" (to the extent the State would adopt and implement the measure as a voluntary commitment rather than a regulatory measure), "Identification of High-Polluting Vehicles," and "Other VOC or NO_x emissions control measures as appropriate" (to the extent such measures would be voluntary); the contingency measure listed in section 6.d of the State's maintenance plan as "Establish an Offset Ratio for NO_x;" the State's proposal in section 5.a.(3)(b) of the maintenance

plan to remove from the SIP the VOC RACT approval orders for Hill Air Force Base; the State's proposal in section 5.b.(1) of the maintenance plan to remove from the SIP the NOx RACT limits for the PacifiCorp Gadsby Power Plant; and section 5.g of the maintenance plan, which indicates that the employer-based trip reduction program is included as part of the plan. EPA is approving the revisions to UAC R307-110-13, which incorporates the maintenance plan into Utah's rules, but only to the extent we are approving the 1997 8-hour ozone maintenance plan. EPA is disapproving UAC R307-320, the employer-based trip reduction program. EPA is approving the revisions to UAC R307-325, R307-326, R307-327, R307-328, R307-335, R307-340, R307-341, and R307-342, subject to our interpretation of these rules expressed in the preamble to our rulemaking action. EPA is not acting on the revisions to UAC R307-101-2 because the revisions have been superseded by later revisions to the rule, which EPA approved at § 52.2320(c)(67).

(i) Incorporation by reference.

(A) Title R307 of the Utah Administrative Code, Environmental Quality, Air Quality, Rule R307-325, Ozone Nonattainment and Maintenance Areas: General Requirements; Rule R307-326, Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries; Rule R307-327, Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage; and Rule R307-340, Ozone Nonattainment and Maintenance Areas: Surface Coating Processes. Effective March 9, 2007, as published in the Utah State Bulletin on October 1, 2006 and February 1, 2007 in proposed form, and April 1, 2007 as finally adopted.

(B) Title R307 of the Utah Administrative Code, Environmental Quality, Air Quality, Rule R307-328, Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage; Rule R307-335, Ozone Nonattainment and Maintenance Areas:

Degreasing and Solvent Cleaning Operations; Rule R307–341, Ozone Nonattainment and Maintenance Areas: Cutback Asphalt; and, UAC R307–342, Ozone Nonattainment and Maintenance Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks. Effective January 16, 2007 as published in the Utah State Bulletin on October 1, 2006 in proposed form and February 1, 2007 as finally adopted.

(ii) Additional materials.

(A) Utah State Implementation Plan, Section IX, Part D, 8-Hour Ozone Maintenance Provisions for Salt Lake and Davis Counties, with the following exceptions: subsection 5.a.(3)(b), paragraphs 2, 3, and 4, beginning with "The State of Utah..." and ending with "... (Stratospheric Ozone)." on pages 17 and 18; subsection 5.b.(1), beginning in paragraph 1 at "On April 3, 2002..." and ending with "the ozone maintenance plan." at the end of paragraph 2 on page 18; subsection 5.g., Control Measure Carried Forward from the 1-hour Ozone Plan, on page 20; subsection 6.d., first bullet, Alert Day Enhancements, on page 22; subsection 6.d., third bullet, Heavy Equipment Emission Control Program, on page 22; subsection 6.d., fourth bullet, phrase "Request voluntary commitments or" on page 23; subsection 6.d., fifth bullet, Identification of High-Polluting Vehicles, on page 23; and, subsection 6.d., sixth bullet, Establish an Offset Ratio for NO_x, on page 23. Adopted by the Air Quality Board on January 3, 2007.

[FR Doc. 2013-23248 Filed 09/25/2013 at 8:45 am; Publication Date: 09/26/2013]